IN THE HIGH COURT OF BOMBAY AT GOA
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WRIT PETITION NO. 20 0F 2002

Shri Sakharam Y.
Sawant, Messenger
Peon, Caixa Economica
de Goa, Panaji, r/o
Panaji, Goa. ..... Petitioner.

Versus

1. The Custodian,
Caixa Economica
de Goa, State Bank
of India (Personal
Manager), main Branch
near Mandovi Hotel,
Panaji, Goa,

2. State of Goa, through
its Chief Secretary,
having office at
Secretariat, Panaji,
Goa, and

3. Union of India, through
its Secretary (Finance),
having office at
New Delhi. ..... Respondents.

Mr. D. Pangam, advocate for the petitioner.

Ms. S. S. Naik, advocate for respondent no.1.

Mr. A.N.S. Nadkarni, Advocate General with Mr. G. V. Tamba, Addl. Government Advocate for respondent no.2.

Mr. V. P. Thali, Senior Central Govt. Standing Counsel for respondent no.3.

CORAM : S. J. VAZIFDAR &
P. V. HARDAS, JJ.

DATE OF RESERVING THE JUDGMENT : 1st April, 2003.

DATE OF PRONOUNCING THE JUDGMENT : 3rd April, 2003.

JUDGMENT (Per Vazifdar, J.)

The petitioner seeks a writ of mandamus directing respondent no.1 to grant him a permanent status with all consequential benefits in the post that he has been occupying

for over twenty five years. The alternative prayer to direct respondent no.2 to absorb him in Government service with all consequential benefits has not been pressed by the petitioner, nor for that matter, have respondent nos. 1 and 3 persued the submission that respondent no.2 is bound to do so. Respondent no.2 is the State of Goa. Respondent no.3 is the Union of India.

2. The Goa, Daman and Diu (Banks Reconstruction) Regulation, 1962, came into force on 20th December, 1961. The Regulations were in respect of two Banks, one of which was respondent no.1. Regulations 3 , 4 and 6 read as under:-

> "3. In view of the closure of the Banks and the transfer of a substantial portion of their assets out of India on or about the appointed day and the difficulties experienced by depositors, the Banks shall, as from that day, be reconstructed in the interests of the general public in accordance with the provisions hereinafter contained.
>
> 4.(1) The Central Government may appoint one or more Custodians to take charge of the Banks.
>
> (2) A Custodian appointed under sub-section (1) shall hold office for such period and shall receive such salary and other allowances as may be determined by the Central Government.
>
> (3) The Central Government may, for the purposes of securing the proper management of the affairs of the Banks, give to the Custodian such directions not inconsistent with this Regulation as it may deem fit.
>
> (4) Subject to the provisions of sub-section (3), the Custodian shall exercise all

such powers and do all such acts or things as were exercised or done by or on behalf of the Banks or as may be necessary for the purposes of this Regulation.

6.(1) For the purposes of enabling the Custodian to discharge the obligations imposed on him under this Regulation, the Central Government may, after due appropriation made by Parliament by law in this behalf, grant to the Custodian such loans on account of either of the Banks as it may deem fit.

(2) The terms and conditions on which such loans may be granted shall be determined by the Central Government from time to time, and it shall be competent for the Central Government, if it is necessary so to do, to adjust any loan or any portion thereof against any subsidy which the Central Government may, after due appropriation made by Parliament by law in this behalf, grant to the Custodian for discharging the liabilities and obligations of the Banks or of either of them."

3. By an Order in writing dated 1st October, 1977, respondent no.1 appointed the petitioner on a temporary month-to-month basis as a Messenger. Under Clause 6 his duties included sweeping the premises, dusting the furniture and other sort of work as required to keep the office in proper condition of cleanliness and order. Under Clause 7, he was to assist the staff in all other manual service of the office. This form of temporary appointment on a month-to-month basis has continued to date. The last Order produced by the petitioner immediately before the petition was filed on 9th July, 2001, was dated 31st March, 2001. The appointment was from lst April, 2001 to 30th April, 2001, on the same conditions as before. It is not disputed that even

thereafter the petitioner was similarly appointed. The petitioner in fact discharged various duties mentioned in the aforesaid orders. In addition thereto, he also had to visit the State Bank of India where respondent no.1 had his office for taking his signatures on various documents; visit the office of the Mamlatdar in respect of recovery of dues of the Bank; clean the entire record of the institution, which was very old, every three months; visit the Audit Office of the Bank; pay water bills, electricity bills and rent and purchase stationery.

4. It would be noticed, therefore, that the work carried out by the petitioner was of a permanent nature. The duties were not required to be performed on account of temporary or sporadic exigencies. This aspect hardly required any elaborate discussion or reasoning. Rents and dues require to be paid periodically. The records require to be maintained. The office requires to be cleaned and kept in a hygienic condition. This was the perennial permanent work which the petitioner was required to do and which he admittedly has done, to the satisfaction of the employer. This was not a case of employment of a casual worker on account of exigencies of work.

5. The petitioner has been pursuing his appointment on a permanent basis and the regularization thereof for over twelve years. He has made representations and has approached

each of the respondents. For a considerable amount of time since 1989 the respondents appear to have been considering as to which of them was required to absorb the petitioner. This was no fault of the petitioner. Once again it does not require any elaboration to say that considering the nature of his job he would only remain in a state of confusion when the technicalities of various provisions were being discussed between the respondents inter-se. Before us, respondent no.1 and respondent no.3 fairly conceded that they could not contend that respondent no.2 is bound to absorb the petitioner. That aspect, therefore, need not detain us.

6. On behalf of respondent no.1 it was sought to be contended that respondent no.1 as the Custodian appointed under the aforesaid Regulations, did not have the power or the authority to appoint the petitioner on a permanent basis with the Bank. The submission is without any force. Regulation 4(4) expressly states that the Custodian shall exercise all powers and do all such acts or things as were exercised or done by or on behalf of the Bank. Surely such appointments were necessary and were being made by or on behalf of the Bank. This aspect can hardly be denied. Indeed respondent no.1 has, in fact, appointed the petitioner. We do not read the Regulations as limiting the power of the Custodian only to make temporary appointments. There is nothing in the language of any of the Regulations which suggests any such limitation. In the circumstances,

respondent no.1 certainly had the power to make such appointments.

7. It is now well-established that in respect of employees such as the petitioner, efforts must be made to regularize them as far as possible and as early as possible, subject to their fulfilling qualifications, if any, prescribed for the post and subject also to availability of work. It is also clear that if such an employee is continued in his post for a fairly long spell, a presumption may arise that there is regular need for his services. While considering such an appointment the parties ought to adopt a positive approach coupled with empathy for the person. **(State of Haryana & Ors. vs. Piara Singh & Ors. [1992] 4 SCC 118 paragraph 51).**

8. We have already held that the nature of the work was such that it was of a perennial and permanent nature. This is further substantiated by the fact that the petitioner has been continuously appointed in the said post for over twenty five years. Moreover the petitioner is the only peon in the department. He is thus deprived even the benefits of leave. Nothing more is required to establish his case.

9. It was also contended on behalf of respondent no.1 that the petition may soon become infructuous as there is every possibility of the Bank winding up in the near

future. We are not at all inclined to accept this submission. The same thing was stated by respondent no.1 almost eighteen years ago in its letter dated 1st November, 1985, addressed to the Under Secretary (Personnel), Government of Goa. Eighteen years later the Bank continues to remain in existence. It would be grossly unfair to deny the petitioner reliefs on this specious plea and on the uncertain eventuality of the Bank winding up. Thus far there has been no evidence of the same. In any event, the petitioner's case for being granted permanent status deserves to be accepted, at least from 1st October, 1991, if not earlier. The submission is, therefore, rejected.

10. In the circumstances the following Order is made:-

(i) Rule is made absolute in terms of prayer (a). This shall be with effect from 1st October, 1991.

(ii) Respondent no.1 shall pay the costs of this petition to the petitioner fixed at Rs.2,500/- (rupees two thousand five hundred only) within four weeks from today.

P. V. HARDAS, J. S. J. VAZIFDAR, J.

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